Supreme Court, U.S.
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No. 95-1267

In The

Supreme Court of the United States

October Term, 1995

WILBURTA T. HOLDEN LIVING TRUST,

Petitioner,

v.

JOINT CITY-COUNTY BOARD OF TAX ASSESSORS,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeals Of The State Of Georgia

REPLY BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW BY PETITIONER

The following questions are presented for review by Petitioner, and are set forth below for the convenience of the Court. Respondent objects to Questions one and two on the ground, among others, that there was no evidence properly admitted in the trial court upon which to raise constitutional issues. Respondent objects to Question three in that it is purely a matter of state law and no constitutional issues are implicated. Moreover, question three is not argued in Petitioner's Brief and should be deemed abandoned.

1.

Whether the 1991 and 1992 tax reappraisals, which were made by the Respondents (Assessors) of Holden's real estate and of all other real estate located in Fulton County, Georgia and City of Atlanta, Georgia, deny Holden of due process and equal protection of the laws as guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and by the Georgia Constitution.

2.

Whether the appraisal methodology adopted by the Assessors violated the Fifth and Fourteenth Amendments to the Constitution of the United States and the Constitution of the State of Georgia.

3.

Whether the trial judge should have been disqualified because he was a taxpayer in Fulton County and City of Atlanta and $30,000.00 of his salary was paid by

QUESTIONS PRESENTED FOR REVIEW BY PETITIONER – Continued

Fulton County and whether Holden was denied due process and equal protection of the same Constitutions because the trial judge was not qualified to preside.

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OPINIONS AND JUDGMENT BELOW

Within Appendix A to the Petition for Writ of Certiorari, Petitioner has provided the Order of the Court of Appeals for the State of Georgia entered on August 15, 1995, which affirmed the decision of the lower court without opinion. Appendix B contains the Order of the Superior Court of Fulton County, Georgia. Within Appendix C to the Petition for Writ of Certiorari, the Petitioner has provided the Order of the Supreme Court of the State of Georgia denying Petitioner's petition for certiorari regarding the decision of the Court of Appeals.

STATEMENT OF JURISDICTION

Respondent does not concur with Petitioner's assertion that 28 U.S.C. §1254 provides a statutory basis for jurisdiction. This appeal is not taken from a decision of a United States Court of Appeals. As no proper basis for jurisdiction has been alleged, the Petition should be dismissed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent agrees that Petitioner brings this petition for certiorari based on the Fourteenth Amendment to the Constitution of the United States. However, Respondent denies that Petitioner's rights to due process and equal protection have been violated by the Respondent.

STATEMENT OF THE CASE

This petition arises from a decision of the Georgia Court of Appeals dated August 15, 1995, affirming the decision of the trial court without opinion (Pet. App. A & B). The Supreme Court of the State of Georgia denied Holden Trust's petition for writ of certiorari to that court.

The subject matter of this case is a routine state statutory ad valorem tax appeal. The pertinent facts as proven in the trial court are set forth below.

Petitioner is the trust for the real property of George Holden, Jr. and his wife, Wilburta T. Holden. The corpus of the trust property is a residential house located in the City of Atlanta, Fulton County, Georgia, commonly known as 4355 Harris Trail.

Petitioner's property was initially appraised by Respondent and a fair market value of $486,500.00 was established. Contrary to Petitioner's assertion, the fair market value for ad valorem taxes as of January 1, 1993, was not based upon figures determined by the contract appraisal firm of Cole-Layer-Trumble. Instead, the appraised value was established at trial by Richard Davis, whose credentials as an expert real estate appraiser were stipulated by the Petitioner. Mr. Davis based his opinion on current market data. After trial, the jury returned a verdict of $317,000.00 as the fair market value of the property on January 1, 1993.

Petitioner also raised state and federal constitutional due process and equal protection issues concerning the entire mass reassessment procedure conducted in Fulton County in 1989-91. The constitutional issues were tried to

the court. Petitioner put forth no independent evidence of any alleged constitutional deficiency. Petitioner's arguments were based solely upon affidavits, deposition transcripts, loan documents and other materials originally submitted in a prior unrelated case. At the close of Petitioner's evidence, the trial court granted Respondent's Motion for Involuntary Dismissal.

ARGUMENT

A. Standard of Review

Simply stated, this petition does not present any issue of compelling importance for which certiorari should be granted. It involves no conflict between federal appellate courts, nor between a state court of last resort and a federal appellate court. Finally, it does not involve any issue of federal law that has not been settled by this Court.

United States Supreme Court Rule 10 states: "[R]eview on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons." As Chief Justice Taft stated:

> It is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the circuit courts of appeal.

Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 393 (1923).

B. Petitioner's Writ Should be Denied as it Presents No Federal Constitutional Issues.

This case arose from the ad valorem tax appeal of a residential parcel of property in Fulton County, Georgia. A jury trial was held which established the fair market value of the property as of January 1, 1993. Immediately thereafter, the trial court conducted a bench trial of Appellant's claims that the county-wide property reassessment for Fulton County was somehow violative of the state and federal constitutions. At the close of Petitioner's evidence, the trial court granted Appellee's Motion for Involuntary Dismissal.

The Petitioner makes a number of contentions and sets forth various alleged facts regarding the reassessment process in Fulton County. See Petition pp. 5-24. However, to the extent they are even relevant, these assertions are not supported by any competent evidence in the record. In fact, none of the "facts" set forth by Petitioner were established in the bench trial or even admitted into evidence by the trial court. Moreover, Petitioner did not enumerate the exclusion of this evidence as error in his state court appeal.

The Court of Appeals of the State of Georgia affirmed the decision of the trial court *without opinion*. This summary decision was undoubtedly based upon the fact that the Petitioner's allegations were unsupported by any evidence within the record and the trial court correctly dismissed them. No constitutional ground was properly

raised for consideration by the Petitioner. Pretermitting whether the decision of the Georgia Court of Appeal's is correct or not, the standard for granting certiorari in the United States Supreme Court is significantly more demanding. The fact that this is not a case, factually or legally, of compelling importance is indicated by the denial of certiorari in the Georgia Supreme Court. For a more specific response to the constitutional allegations asserted by Petitioner, that section of Respondent's Brief in the Georgia Court of Appeals is attached as Appendix I.

General allegations of the denial of the equal protection under the Georgia and federal constitutions have been addressed by the Georgia Supreme Court in the context of ad valorem taxation.

> "We reach the same conclusion with respect to appellant's claim under the state and federal equal protection clauses. 'The applicable principles [relating to federal equal protection] have been often stated and are entirely familiar. The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable

> schemes of state taxation . . . It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value . . . "To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our Government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure." *Ohio Oil Co. v. Conway*, (281 U.S. 146, 159 (50 SC 310, 74 LE 775)).' *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (79 SC 437, 3 LE2d 480)." *McLennan v. Aldredge*, 223 Ga. 879, 885 (159 SE2d 682) (1968). We do not believe that a different rule should obtain under the equal protection clause of the Georgia Constitution. See *Ingalls Iron Works Co. v. Chilivis*, 237 Ga. 479 (228 SE2d 866) (1976)."

Rogers v. Dekalb County Tax Assessors, 247 Ga. 726, 729 (1981).

Contrary to Petitioner's belief, the only matter which was ever at issue in this case was the fair market value of a house and a lot in January of 1993 for ad valorem tax purposes. The only entity affected by the outcome of this case is the Holden Trust. The Petition for Certiorari should therefore be denied.

CONCLUSION

The Petition for Certiorari presents no issues for resolution by this Court pursuant to Rule 10. Accordingly, the Petition for Writ of Certiorari must be denied.

Respectfully Submitted,

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APPENDIX I

Argument and Citation of Authority related to constitutional issues from Respondent/Appellee's Brief in the Court of Appeals of Georgia.

IV. ARGUMENT AND CITATION OF AUTHORITY

A. Standard of Review

This Court, reviewing assertions of error, must look to the evidence submitted and is bound to construe the evidence to support the lower court's judgment where there is "any evidence," to support it. *See Knight v. Stevens Logging, Inc.*, 173 Ga. App. 359, 360, 326 S.E.2d 494 (1985). Moreover, absent legal error, an appellate court is without jurisdiction to overturn factual findings supported by some evidence. *Georgia Power Co. v. Harrison*, 253 Ga. 212, 216, 318 S.E.2d 306 (1984).

This Court must also presume that the lower court's judgment was correct. The appellant asserting error has the burden to affirmatively show such error by evidence submitted of record. Where the court's finding is supported by undisputed evidence, it will be upheld. *Id.; see also Barry v. Stanco Communications Products, Inc.*, 243 Ga. 68, 70, 252 S.E.2d 491 (1979).

In the present case, Appellee's motion for involuntary dismissal, pursuant to O.C.G.A. § 9-11-41(b), was granted at the close of Appellant's "evidence" on the constitutional claims. (T. 331). Absent a showing that the court abused its discretion, this Court should presume that the court followed the law and affirm the dismissal.

See Century 21 Mary Carr & Assoc. v. Jones, 204 Ga. App. 96, 97, 418 S.E.2d 435 (1992). Appellant has failed to carry its burden to show by affirmative, **competent** evidence of record that the lower court committed reversible error.

B. Inadmissible Evidence

O.C.G.A. § 24-5-31 does not authorize the wholesale introduction into evidence of the record of prior litigated matters. It is of no moment that the depositions, affidavits, loan documents, construction permits, and other materials from the case of *City of Atlanta v. North by Northwest Civic Association, Inc.*, 262 Ga. 531 (1992), were attached to the record.

These documents were objected to as irrelevant, constituting hearsay, and lacking foundation. The court below sustained each objection. See Transcript pp. 288, 298, and 299. The court below noted: "You [referring to Appellants' counsel] want to retain these as part of the record that I have not admitted into evidence." (T. 299) "I was trying to preserve it so you could have them up before the Court if you want to have them up there. They [the appellate courts] may want to look at them for some reason. **I don't want them to think they are part of the evidence that I considered here**." (T. 299).

Appellant has not enumerated as error the trial court's failure to admit the proffered records. As is well established in Georgia law, failure to raise the grounds as error prevents the Court from engaging in further review. *Gillespie v. Gillespie*, 259 Ga. 838, 388 S.E.2d 688 (1990); *Williams v. Terry*, 197 Ga. App. 209, 398 S.E.2d 239 (1990). Appellant has failed to raise the proper issue before this

Court and the issue, if attempted to be raised, is now untimely and waived. This Court should not consider any materials proffered by Appellant as they are outside of the record in this appeal.

C. Constitutional Issues

Appellant's Brief in this Court and in argument to the court below attempts to challenge the constitutionality of the 1991 Fulton County, Georgia, ad valorem tax assessment process and the methods used to appraise real property in Fulton County. In substance, Appellant's Enumeration of Errors One and Two are part and parcel of the same argument. Appellant challenges the constitutionality of the assessment on the grounds that the 1993 assessment was based upon the 1991 mass reappraisal, "appraisers employed by CLT were unqualified," (T. 295), appraisers in 1993 were unqualified (T. 322), neighborhoods were improperly constituted (T. 328), and that the appraisal methods and procedures for residential and commercial property were improperly skewed in favor of commercial owners thus shifting a disproportionate tax burden on residential property owners (T. 330). In each instance, the court below found insufficient evidence to sustain any of Appellant's constitutional challenges as violative of either equal protection or due process requirements.

Additionally, there was no evidence that any of the alleged unconstitutional acts were committed in the appraisal of Appellant's property. As stated above, Appellant has not appealed the jury's verdict as to the

valuation of its property and thus has no challenge to the constitutionality of the overall evaluation process.

In general, both Georgia and federal law relating to the constitutionality of taxation is well established. Under the Georgia Constitution of 1983, Art. VII, § I, ¶ III (a), all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. *See Youngblood v. Georgia*, 259 Ga. 864, 865, 388 S.E.2d 671 (1990). "Tax assessors are authorized to fix the fair market value of property for taxes from the best information obtainable." *Colvard v. Ridley*, 218 Ga. 490, 128 S.E.2d 732 (1962). In making tax assessments, however, authorities are not bound to "use any definite system or method to fix the fair market value." *Id.* So long as the fair market value of the subject property is attained, "the methods employed may be varied." *Chilivis v. Backus*, 236 Ga. 88, 90, 222 S.E.2d 371 (1976); *Ayres v. Douglas County Bd. of Tax Assessors*, 162 Ga. App. 224, 291 S.E.2d 84 (1982).

In reviewing Appellant's constitutional challenge, this Court should take notice of its prior decisions wherein it has been held that

> [a] statute is presumed to be constitutional until the contrary appears, and, therefore, the burden is on the party alleging a statute to be unconstitutional to prove it.

State Farm Mutual Auto. Ins. Co. v. Five Transp. Co., 246 Ga. 447, 271 S.E.2d 844 (1980). The same presumption arises in the instant appeal. For the following cited reasons, the decision of the court below was correct and should be upheld.

1. Equal Protection

Appellant's challenge based upon "equal protection" principles is misplaced. In essence, Appellant alleges that commercial property owners were treated more favorably than residential property owners with the result that the tax burden born by residential owners was unfairly increased. Again, Appellant presented no competent evidence at trial, and cites none before this Court, in support of its speculative allegation.

Equal protection under the Georgia Constitution Art. I, § 1, ¶ 1, 2, and the United States Constitution fifth and fourteenth amendments requires that taxation of all like property be treated equally. *Delta Air Lines, Inc. v. Coleman*, 219 Ga. 12, 19, 131 S.E.2d 768 (1963). Moreover, for purposes of equal protection analysis, classifications do not violate the requirements of either the Georgia or federal constitutions if the distinctions are less than perfect or not made with "mathematical nicety or because in practice it results in some inequality." *Five Transp. Co.*, 246 Ga. at 450-51, 271 S.E.2d at 850. So long as the distinctions and different methods used further some "rational" relationship to state interests and are not arbitrary, equal protection is not violated. *Id.*, at 451, 271 S.E.2d at 850.

The Equal Protection Clause of the Fourteenth Amendment likewise does not impose an "iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation." *Rogers v. DeKalb County Bd. of Tax Assessors*, 247 Ga. 726, 729, 279 S.E.2d 223 (1981). States are not required to "resort to close distinctions or to maintain a precise,

scientific uniformity with reference to composition, use or value." *Id.*

In *Allegheny Pittsburg Coal Co. v. Webster County*, 488 U.S. 336 (1989), the Supreme Court analyzed the role of the United States Constitution's Equal Protection Clause in state ad valorem tax assessment. The Court held the "Equal Protection Clause 'applies only to taxation which in fact bears unequally on persons or property of the same class.' " *Id.*, at 343 (citing *Charleston Fed. Sav. & Loan Ass. v. Alderson*, 324 U.S. 182 (1945)). "Just as that Clause tolerates occasional errors of state law or mistakes in judgment when valuing property for tax purposes, . . . it does not," the Court continued, "require immediate general adjustment on the basis of the latest market developments." *Allegheny Pitt.*, 488 U.S. at 343.

In the instant appeal, Appellant has cited no competent evidence that the methods or procedures used by the Joint City-County Board of Tax Assessors in any way resulted in a violation of the equal protection clauses of the Georgia Constitution or the United States Constitution. Appellant offers nothing more than bare allegations based on speculation devoid of competent testimony that the procedures applied to commercial property owners differed in any significant way from the procedures and privileges applied to residential property owners. The court below properly dismissed Appellant's contentions based on equal protection grounds and this Court should affirm that decision.

2. Due Process

Legal standards for the determination of due process rights are well recognized in both Georgia and federal law. Due process does not

> guarantee to the citizens of a State any particular form or method of State procedure. Its requirements are satisfied if [the party alleging due process deprivation] has reasonable notice and an opportunity to be heard, and to present his claim or defense due regard being had to the nature of the proceeding and the character of the rights which might be affected by it.

Hancock v. Bd. of Tax Assessors, 226 Ga. 570, 176 S.E.2d 102 (1970) (citing *Zorn v. Walker*, 206 Ga. 181, 56 S.E.2d 511 (1949)).

Federal due process standards do not differ. In *McKesson v. Division of Alcoholic Beverages*, 496 U.S. 18, 37-9 (1990), the Court held that the Due Process Clause required, in addition to notice and hearing, a fair opportunity to challenge the accuracy and legal validity of [the appellants'] tax obligations. By creating a "clear and certain remedy" to correct errors, the states do not violate due process requirements. *Id.*, at 39.

Likewise, although Appellant's due process challenge is vague and fails to specify those procedure(s) which it finds violative of the Constitution, to the extent that Appellant claims that due process requires a "pre-deprivation" hearing, federal courts have uniformly held that in taxation cases due process does not compel a hearing before assessing taxes. *See, e.g., Agbanc, Ltd. v.*

Berry, 678 F. Supp. 805, 808-9 (N.D. Cal. 1987); *O'Connor v. United States*, 669 F. Supp. 317, 322-23 (D. Nev. 1987).

Finally, reviewing the State of Wisconsin's income tax appeals procedures, the United States District Court for the Eastern District of Wisconsin held that procedures indistinguishable from Georgia's ad valorem tax appeals did not violate due process. *Knies v. Richardson*, 600 F. Supp. 763 (E.D. Wisc. 1985). In Wisconsin, after the initial assessment, taxpayers are entitled to a redetermination of the initial assessment, then an appeal to the Wisconsin Tax Appeals Commission, then judicial review in the State's circuit courts, and finally appeal to Wisconsin's appellate forums. Evaluating the Wisconsin procedural process, the court determined "the procedural safeguards available to taxpayers who wish to challenge tax assessments fully satisfy the due process requirements of the fifth amendment." *Knies*, 600 F. Supp. at 765.

Appellant in the present case has completely failed to establish any evidence that the procedures under Fulton County's tax assessment procedures provided it anything less than the fullest measures of due process. Appellant was initially assessed, appealed to the Board of Tax Assessors, the Board of Equalization, the Superior Court of Fulton County, and now presents its case here, the highest court in the State. Combined with the fact that Appellant has not appealed the jury verdict as to the valuation of its property, what more due process does Appellant contend is required? Appellee submits that Appellant has received the full measure of the law, and that the procedures used in assessing ad valorem taxes on real property in Fulton County, Georgia, are procedurally

and substantively in compliance with the State and federal constitutions.